

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH COX, JR.,

Plaintiff,

No. 06-CV-13407-DT

vs.

Hon. Gerald E. Rosen

ANDREW JACKSON, et al.,

Defendants.

ORDER (1) ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, (2) GRANTING, IN PART, AND DENYING, IN PART,
THE MDOC DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
(3) GRANTING DEFENDANT CMC'S MOTION TO DISMISS, AND
(4) DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the
U.S. Courthouse, Detroit, Michigan
on September 29, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This Section 1983 prisoner civil rights matter has come before the Court on the August 28, 2008 Report and Recommendation of United States Magistrate Judge Paul J. Komives, as corrected on September 22, 2008,¹ recommending that the Court (1) grant, in part, and deny, in part, the Motion for Summary Judgment filed by Defendants Howard, Steward, White, Pramstallar, Burton, Palmer, Dingeldey, Ball, Yokom, Nobles, Jeffries and

¹ The Corrected Report and Recommendation only corrected typographical errors and effected no substantive changes in the original R&R.

the Michigan Department of Corrections (the “MDOC Defendants”) (2) grant Defendant Correctional Medical Service (“CMC”)’s Motion to Dismiss, and (3) deny Plaintiff’s motion for a preliminary injunction. Plaintiff and Defendants have timely filed objections to the R&R. The Court has reviewed the Report and Recommendation, Plaintiff’s Objections, and the Court’s entire file of this action, and has concluded that these motions should be disposed of as recommended by the Magistrate Judge.

NOW, THEREFORE,

IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation of August 28, 2008, as corrected by the Corrected Report and Recommendation of September 22, 2008 [**Dkt. Nos. 58 and 62**], be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Report and Recommendation, the MDOC Defendants’ Motion for Summary Judgment [**Dkt. # 31**] is GRANTED, in part, and DENIED, in part. Defendants’ Motion is GRANTED as to all of Plaintiff’s claims against the MDOC Defendants *except* his Eighth Amendment claim against Defendant Pramstallar relating to his hernia. With respect to this latter claim, the MDOC’s Motion is DENIED.²

² Defendant Pramstallar only sought summary judgment on Plaintiff’s Eighth Amendment claim concerning his hernia on *res judicata*/collateral estoppel grounds. Defendant Pramstallar made no argument on the merits of Plaintiff’s claim. As for Defendant’s objection relying upon the Court’s ruling on Plaintiff’s motion for preliminary injunction, that motion was directed to the MDOC and CMS, *not* Defendant Pramstallar, and Defendant Pramstallar was *not* identified in the preliminary injunction motion as a doctor who refused him treatment; Plaintiff identified two other doctors (neither of whom are named in this Complaint). Therefore, the magistrate judge’s conclusion that Plaintiff failed to show

IT IS FURTHER ORDERED that Defendant CMS's Motion to Dismiss [**Dkt. # 44**] is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary Injunction [**Dkt. # 6**] is DENIED.

s/Gerald E. Rosen
United States District Judge

Dated: September 29, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 29, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager

a likelihood of success on the merits for purposes of injunctive relief is not determinative of Plaintiff's claim for damages against Dr. Pramstallar.